**IN THE HIGH COURT OF BOMBAY AT GOA**

**APPEAL FROM ORDER NO.29/2001**

State of Goa,
Rep. By Executive Engineer,
Works Division IX (PHE),
Public Works Department,
Fatorda, Margao, Goa. ..... Appellant.

V/s.

Shri K. Hassainar,
Civil Contractor,
House No.8, Nagoa,
P.O. Verna, Salcete, Goa. ..... Respondent.

Mr. S. R. Rivankar, Government Advocate for the appellant..

Mr. C. Mascarenhas, Advocate for the respondent.

CORAM : S.A. BOBDE, J.

DATE : JUNE 16, 2007.

ORAL JUDGMENT :

This appeal is by the State of Goa against the Judgment dated 18th December, 2000 of the Ist Additional Civil Judge, Sr. Division, Margao in Special Civil Suit No.331/92/B. By the Judgment, the learned Civil Judge has rejected the appellant's objections under Section 30 of the Arbitration Act, 1940. The appellant had objected to the arbitration award dated 3.9.92 made by the Arbitrator upon a reference made by the Civil Court in a civil suit filed by the respondent.

2. The claim was made by the respondent in respect of a contract for laying down of a pipeline undertaken by him. The Arbitrator awarded a sum of Rs.1,93,182/- in respect of eleven claims with interest at the rate of 15 % per annum from 31.5.86 till realisation.

3. The appellant preferred objections under Section 30 of the Arbitration Act. The trial Court which heard the objections, framed the following points for determination :

1. Whether the respondent proves that the Arbitrator misconducted himself while awarding the claim ?

2. Whether the respondent proves that the Award is not prepared by the ld. Arbitrator ?

3. Whether the claimant proves that the objections are barred by the Law of Limitation ?

The learned trial Court did not find any merit in the objections and rejected them.

4. This Court admitted the appeal by a speaking order. This Court

made it clear that it found no reason to disturb the findings recorded by the trial Court on the three points reproduced above. The appeal, however, was admitted in respect of claims No.2, 3 and 5 which were decided in the respondent's favour by the Arbitrator and upheld by the trial Court.

5. Mr. Rivankar, learned Government Advocate on behalf of the appellant submitted that the three claims in question are not justified and are based on no evidence. This contention, however, was not raised before the trial Court. The learned Counsel for the appellant fairly stated that it is not possible to point out from the Judgment that this point was raised and argued. I, therefore, do not propose to allow the appellant to raise the contention in appeal or to otherwise consider the same.

6. The next contention raised on behalf of the appellant is in respect of the interest awarded by the Arbitrator at the rate of 15 % per annum from 31.5.1986 till realisation. Mr. Rivankar submitted that the interest awarded is excessive, having regard to the fact that the contract was in respect of public work which is not commercial in nature. This contention is liable to be rejected in view of the obvious nature of the work. The appellant entered into a contract for civil work, namely laying down of a pipeline. Though such a pipeline may have been laid down as part of the developmental work which is undertaken by a modern welfare State, it does not change the nature

of the agreement entered into by the appellant with the respondent. The terms of the agreement are commercial and the respondent clearly entered into agreement on a commercial basis for profit. He was, therefore, not duty bound to undertake this work for the appellant. The agreement must, therefore, be said to be commercial. This view is supported by a Judgment of this Court in the case of **Satara Zilla Parishad, through its Chief Executive Officer v. Dilip Bhausaheb Pawar, 2002 (Supp.) Bom. C.R. 81** which was considered by a learned Single Judge of this Court in First Appeal No.109/2005, decided on 20th October, 2005. Mr. Rivankar further submitted that the transaction between the appellant and the respondent cannot be considered to be commercial, having regard to the Explanation II to Section 34 of the Code of Civil Procedure. This submission is not in accordance with the view of the Supreme Court in **Bhagawati Oxygen Ltd., v. Hindustan Copper Ltd., 2005 AIR SCW 1966** where the Supreme Court observed that Section 34 of the Code of Civil Procedure has no application to arbitration proceedings since an arbitrator cannot be said to be a `Court' within the meaning of the Code. The Court observed that an arbitrator can grant interest for all the three stages, provided the rate of interest is reasonable. It is, therefore, necessary to see whether the interest awarded by the Arbitrator in the present case can be said to be reasonable. The respondent had claimed interest at the rate of 18 % per annum since he was denied payment from 31.3.1986. Having regard to the long period for which the respondent was

denied payment, the Arbitrator awarded interest at a reduced rate of 15 % per annum from 31.3.1986 till date. The learned trial Judge, who considered the appellant's objections, observed that the appellant did not substantiate its contention by any evidence by producing any evidence that the rate of interest granted by the Arbitrator is on the higher side. The learned trial Judge further observed that even though the award was passed on 3.9.92, the appellant had not deposited the amount till today i.e. 18.12.2000. In the result, the trial Court considered the rate of interest at the rate of 15 % p.a. reasonable and rejected the appellant's objection. In this view of the matter, the appellant not having produced any evidence to point out that the rate of interest is unreasonable or excessive, in the circumstances of the case, I see no reason to interfere with the grant of interest.

7. In the result, there is no merit in the appeal, which is, hereby, dismissed.

S.A. BOBDE, J.

ssm.